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In re: Petition of City of Waltham)	
Regarding Streetlight Purchase)	D.T.E. - 02 - 11
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The Company claims that it is fair to allocate 40% of the accumulated depreciation for the support accounts to the account 636 streetlights, and only 20% of the gross additions to the account 636 streetlights, even though the account 636 streetlights only represent 15% of the total streetlights in the City.

The Company justifies the allocation of 40% of the depreciation to the account 636 lights on the following assumption:

At page 77 of the hearing record, the following exchange took place between the Counsel for the company and the Company's witness:

A: “Yes.”

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In the City's view, the relative amounts of accumulated depreciation in these two accounts may be evidence of the general age of the equipment in these two accounts (635 and 636). However, this has no evidentiary value regarding the age of the support equipment in the other four accounts (632, 633, 634 and 637).

The Company has not offered any Waltham specific data to support these allocations.

Rather than establish with available Company records, the actual timing of the additions to the support accounts and the actual timing of the additions to account 636, the Company uses the assumption that the vintage of the support equipment supporting account 636 is the same as the vintage of the account 636 lights themselves.

Even a cursory review of the Company's document (Exhibit W-4), makes painfully clear that the timing of the additions to the support accounts 632, 633 and 634 is *not* the same as the timing of the additions to account 636. (The only support account that shows increased additions activity that is contemporaneous with the additions to the 636 account is account 637, which is also the only support account with a positive net book value.) The assumption of simultaneous additions and common vintage, between the three support accounts with negative book value and account 636, implied in the Company's testimony, and asserted in the Company's brief, is clearly wrong.

The fundamental assumption underlying the fairness of the allocation in Waltham is not supported by the facts. The Company has the available documentation to establish the relative timing of these additions. The Company has not only chosen not to use these records, the Company is attempting to prevent the Department from considering the information contained in these records. The Waltham specific information regarding the timing of the additions does not support the Company's assumption.

The Waltham specific data that the Company seeks to exclude demonstrates the fallacy of the company's assumption of common vintage.

Two thirds of the account 636 streetlights are category A installations (see Waltham exhibit W-5). According to the Company's Outdoor Lighting Rate, these category A streetlights are installed on "existing poles carrying utilization voltage". If no support equipment is installed to support two thirds of the account 636 streetlights, how on earth can the accumulated depreciation associated with these category A streetlights bear any relationship to the vintage of, or the accumulated depreciation of support equipment that, by definition, *was not* installed at the time the lights were installed?

The Company's "Outdoor Lighting Rate" is an overhead streetlight tariff. It does not provide for any underground installations. If no underground equipment was ever installed to support the account 636 lights, how on earth can the age of the account 636 lights bear any relationship to the age of the underground equipment in accounts 633 and 634?

The amount of depreciation in account 635, and the relative vintage of account 635 streetlights in Waltham, has nothing to do with the age of the support equipment supporting those account 635 streetlights in Waltham. The reason is that the vintage of the account 635 streetlights in Waltham is driven by the date that Waltham implemented a conversion from mercury vapor fixtures to sodium vapor fixtures. At page 77 of the hearing record, the following exchange took place between City's Counsel and the Company's witness:

Q: "You testified that in general the commercial lights were older than the municipal lights. By that you mean 636 versus 635, right?"

A: "The commercial lights are in account 636, yes."

Q: "And your counsel just asked you would it be reasonable to assume that at the time you installed the conduit and overhead wire and ancillary stuff was basically at the same time you installed the light itself. Is that the gist of what was asked?"

A: "Yes. In order to have the light emit light, you would need the supporting equipment, yes."

Q: "How about when you do a sodium conversion?"

A: "I don't know anything about sodium conversions, sir."

Q: "Well, if you were to take all of the municipal lights in Waltham off of the end of the bracket, all the mercury off, and put a sodium on, that would make the age of those municipal lights a lot newer if you did it in the last five or six years, right?"

A: "If the installation date was recent, yes."

Q: "But if they were serviced by underground conduit, you wouldn't redig it, you would take the fixture off and put a new one on. So the underground conduit associated with a dedicated light that converted from mercury to sodium wouldn't be changed. I mean you took the mercury light off and put the sodium on."

A: "I'm not an engineer. I don't know if there would have to be any retrofit."

Q: "Wouldn't you have to know the answer to that to know the answer to counsel's question? If the thing that is driving the age of the municipal lights in Waltham is the dates they did their sodium conversion, that would be - - if the answer to that question is we do a sodium conversion, you don't change the wire that runs across the street, don't change the underground conduit, you just take the light off at the end of the bracket and put a new one on, then the answer to

counsel's question would be no. You need to know the answer to that to know the answer to that question."

A: "I don't know anything about any sodium conversion. I can't speak to that process."

Q: "I'm not asking you to. I'm asking you, if that happened, and that's what driving the ages here, would your answer be different to the question that counsel asked you?"

A: "I don't know the answer to that, sir."

By the admission of the Company's own witness, because he is unfamiliar with the nature of the installations associated with a sodium conversion, he can not, and has not, established that the vintage of the 636 lights is the same as the vintage of the support equipment that allegedly supports those lights.

Waltham Exhibit W-4 documents that, in the years between 1987 and 1982, \$851,000 in additions were added to account 635. In the same six-year period, there was no increase in the additions activity in the support accounts.

The Company is using an assumption to support its allocation. The Waltham specific data demonstrates that the Company's assumption is wrong. The Company is opposing the consideration of the Company's own document that shows the history of the additions in each account, because the facts in this history make a mockery of the Company's assumption. NSTAR has not, and cannot, support the allocation used in Waltham with any Waltham specific data. There are no facts on the record to support the proposition that the vintage of either municipal or the private streetlights is the same as the vintage as the support equipment that allegedly supports those lights.

The facts are not friendly to the Company's position. So the Company is resorting to procedural ploys to avoid the consideration of these unfriendly facts.

The Company's procedural arguments are not valid.

The Company is attempting to use the Department's rules of adjudicatory procedure to avoid the consideration of the Waltham specific data that is unfriendly to the Company's position. A streetlight dispute, however, is not an adjudicatory proceeding. The Company's procedural ploys should fail on several grounds.

The first and most basic problem with attempting to use the rules of adjudicatory procedure is that this is not an adjudicatory proceeding. Chapter 30A, and the Department's regulations define an adjudicatory proceeding as one in which a hearing is required as a matter of right. The Company acknowledges this definition in the Company's brief.

In recognition of the “hearing requirement” as the threshold requirement for converting this streetlight dispute into an adjudicatory proceeding, the Company makes two equally specious arguments as to why a hearing is required as a matter of right.

First, the Company attempts to make a constitutional claim to a hearing as a matter of right. No court in Massachusetts has ever recognized a constitutional right to a hearing before the Department or the predecessor agency, the DPU. The Company has not, and cannot, cite any Massachusetts case supporting its constitutional claim.

Second, the Company attempts to make a statutory claim to a hearing as a matter of right. The Company makes the preposterous argument that the regulations (as yet un-drafted) designed to deal with consumer complaints of unfair competition on the deregulated side of the electric industry, somehow should be read to require a hearing regarding the Company’s regulated streetlight distribution rate. The Company has not, and cannot, make even a colorable statutory claim to a hearing as a matter of right.

There is good cause to consider Exhibits W-4 and W-5.

Even if the Department decided to part with the precedent of treating streetlight disputes as non-adjudicatory proceedings, and even if the Department decided to read a hearing requirement as a matter of right into this streetlight dispute, the Company’s position is still without merit. The Waltham specific facts do not support the assumption that the Company has chosen to make in this case. The assumption that the vintage of the streetlight equipment in accounts 636 and 635 is the same as the vintage of the support equipment in the four ancillary accounts, is critical to the Company’s substantive position. Waltham Exhibit W-4 documents the history of the additions to all of these accounts. Waltham Exhibit W-4 documents that the additions history to the support accounts 632, 633 and 634 does not track the additions history to account 636. The only support account in which the additions history tracks the additions history to account 636 is account 637, which is the only account that has a positive book value. There is good cause to consider the additions history in W4, because it bears on the central issue in this dispute.

Exhibit W-5, when read in concert with the Company’s tariff, which the Department is free to take judicial notice of, establishes that two thirds of the account 636 lights are category A installations on the Company’s “Outdoor Lighting Rate”, and one third are category B installations on the Company’s “Outdoor Lighting Rate. This is an overhead streetlight rate that specifies the types of installations that are contemplated. No underground installations of any sort are contemplated by this rate. Consequently, the assumption that the underground equipment installed in accounts 633 and 634 would have been installed at the same time as the account 636 lights is wrong. There is good cause to consider the information in this document and the outdoor tariff to which it relates, because it represents substantial evidence that one of the basic assumptions of the Company’s case is wrong.

Waltham has offered an alternative allocation methodology.

In the Company's brief, the Company claims that, "Waltham has not offered an alternative allocation methodology." Even though the City is not required to do so, the City has offered an alternative allocation technology. The City did not develop an alternative allocation method. But the City did suggest, in one of the conference calls prior to the hearing, and also at page 58 of the hearing record, that the Company's "Step 3" allocation methodology would be more equitable than the over-allocation of negative plant value to the private lights, which results from the allocation used in this case.

In Step 3 of the Company's purchase price calculation, the Company simply uses the percentage of municipal streetlights vs. private streetlights to allocate gross additions and accumulated depreciation. In using this simple approach, the Company uses a common fraction to allocate gross additions and accumulated depreciation. This Step 3 allocation does not take into consideration the differing age of the private streetlights vs. the municipal streetlights. There is no reason that the Company could not use the Step 3 allocation procedure to allocate the Step 2 values. The account 636 streetlights represent 15% of the streetlights in the City. If the Company used the Step 3 procedure to allocate Step 2 values, the result would be an allocation of 15% of the negative net values associated with the support accounts to the private lights, rather than 244% of net value that results from the Company's Step 2 procedure. The Company has simply ignored this proposal.

In light of the fact, that none of the account 633 or 634 equipment was installed to support the private lights, it would make the most sense to use the 15% allocation standard for account 632 and 637 equipment. 100% of the negative net value associated with the underground support accounts (633 and 634) should be allocated to the underground served streetlights, all of which are in account 635.

Conclusion

- 1) The assumption of common vintage and common depreciation between the account 636 streetlights and the equipment in the ancillary accounts is not supported with Waltham specific data.
- 2) The assumption of common vintage and common depreciation between the account 635 streetlights and the equipment in the ancillary accounts is not supported with Waltham specific data.
- 3) The Waltham specific data demonstrates the fallacy of the Company's assumption with respect to accounts 632, 633 and 634, the three ancillary accounts that have negative net value.
- 4) The 637 account, which is the only ancillary account with positive net value, is the only support account for which the additions activity appears to track the additions activity in the 636 account.

- 5) None of the account 636 streetlights are serviced by an underground tariff.
- 6) None of the account 636 streetlights required the installation of underground conductor or conduit.
- 7) None of the negative net value associated with this underground conduit and underground equipment should be allocated to account 636.
- 8) The Company has not only failed in its affirmative obligation to support its purchase price with Waltham specific data, the Company has aggressively sought to block the consideration of the Waltham specific data in the Company's own document that contradicts the Company's assumption of common vintage.
- 9) The procedural efforts of the Company to assert the procedural rights to adjudicatory procedure are inconsistent with the non-adjudicatory nature of this streetlight dispute. Since there is no right to a mandatory hearing, this is not an adjudicatory proceeding. Since this is not an adjudicatory proceeding, the Company does not have the standing to insist on procedural rights in the Department's regulations that relate specifically to adjudicatory proceedings by the express language of those regulations.

The City requests that the Department grant whatever relief the Department deems appropriate.

Respectfully Submitted,
City of Waltham
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